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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)

To: Federal-State Joint Board

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COMMENTS OF METRICOM, INC.

Metricom, Inc. ("Metricom"), pursuant to Section 1.415 of the Commission's Rules, by its attorneys, hereby submits these comments in the above-captioned proceeding. This proceeding is to establish regulations under the universal service provisions, Sections 214(e) and 254, of the Telecommunications Act of 1996 (the "1996 Act").^{1/} Those sections require the Federal Communications Commission (FCC or "Commission") to create specific mechanisms for the advancement and support of universal service, funded by contributions assessed on certain telecommunications providers and paid out according to certain policies and guidelines developed by Congress.^{2/}

Metricom supports the Commission's universal service goals and principles. In these comments, Metricom first respectfully requests that the Commission exercise its discretion to

^{1/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et. seq.). Each provision of the 1996 Act will be referred to in these Comments by the section number of the Communications Act at which it is codified, rather than by its section number in the 1996 Act.

^{2/} See generally 1996 Act §§ 254(b) (policies for preservation and advancement of universal service), 254(d) (contributions to universal service mechanisms).

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exempt Part 15 service providers from the obligation to contribute to universal service funding, because the administrative costs of collecting those contributions will exceed the contributions themselves. Second, Metricom urges the Commission, in adopting subsidies for carriers providing service to schools, libraries, and health care providers, to ensure that those subsidies are competitively neutral and are available to all carriers. Finally, Metricom requests the Commission to use the provisions regarding state-certified eligible carriers to define the circumstances under which a carrier will be required to interconnect with public institutional telecommunications users.

I. Background

Metricom is a young, rapidly expanding, technologically innovative company based in Silicon Valley. Metricom is a pioneer in the development of state-of-the-art, spread spectrum, unlicensed data communications systems operating under Part 15 of the Commission's Rules and Regulations. Metricom's frequency hopping, spread spectrum systems -- at the leading edge of technology -- offer a unique, license-free wireless solution providing cost-effective, intelligent and flexible local and wide area (regional) data communications for a variety of important applications in the public interest.

II. The FCC Should Exempt Providers of Unlicensed Services From the Requirement That Telecommunications Carriers Contribute to the Mechanisms Established for the Preservation and Advancement of Universal Service

The 1996 Act requires the FCC to levy a surcharge on every company that provides interstate telecommunications services in order to subsidize the price of furnishing certain services to certain users.^{3/} However, the 1996 Act permits the FCC to exempt from this requirement any "carrier or class of carriers . . . if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis."^{4/} Providers of unlicensed services are a class of carriers whose interstate telecommunications activities and likely contributions to universal service are insignificant, particularly when compared to those of providers of licensed services. Therefore, sound public policy requires, and the 1996 Act authorizes, the Commission to forbear from burdening Part 15 operators with unnecessary surcharges.

Congress gave the FCC this authority in cases where "the administrative cost of collecting contributions from a carrier or class of carriers would exceed the contribution that carrier would otherwise have to make."^{5/} Under this reasoning, the agency should exempt unlicensed Part 15 providers. The Part 15 industry is an insignificant source of revenues compared to the telecommunications industry as a whole; Part 15 revenues amount to less than

^{3/} A "telecommunications service" is defined as "the offering of telecommunications for a fee to the public." 1996 Act § 3(46). "Telecommunications," in turn, is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 1996 Act § 3(43).

^{4/} 1996 Act § 254(d).

^{5/} S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 131 (1996).

one half of one percent of telecommunications industry revenues.^{6/} It would best conserve scarce Commission resources if the Commission simply exercised its authority under the 1996 Act to exempt the class of Part 15 providers from the administrative and financial burdens associated with the imposition of universal service surcharges. The administrative costs associated with levying the surcharge on unlicensed carriers include deciding which Part 15 services are telecommunications services, identifying Part 15 service providers,^{7/} separating costs and revenues, and allocating contributions based upon some accounting principles to be developed. Part 15's contributions, even if assessed to the full extent of the Commission's authority, are likely to be de minimis.

Not only does the "administrative cost of collecting contributions" include the costs described above, it also includes the economic effects of imposing what amounts to a tax on this emerging and innovative industry. The FCC has repeatedly demonstrated its belief in the importance and utility of unlicensed devices. Recognizing that unlicensed devices "will increase productivity by allowing businesses to operate more efficiently," the Commission allocated 110

^{6/} In a 1994 report to Congress, the Commerce Department estimated the annual revenues of the entire Part 15 industry in 1992 to be \$820 million. Department of Commerce, Preliminary Spectrum Reallocation Report, NTIA Special Publication 94-27 (Feb. 10, 1994). This estimate includes revenues from applications that are not telecommunications activities, such as security alarm systems and meter reading systems. By contrast, the annual revenues of the telecommunications industry in 1993 were \$170 billion. Industry Analysis Div., Trends in Telephone Service 43 (Feb. 1995).

^{7/} Identification is not an easy task. In the case of Part 15 services, the Commission will have no licenses to assist in the identification process.

MHz of spectrum in the 2 GHz band to unlicensed PCS devices.^{8/} Recently, the Commission stated:

In addition to the enormous benefits to both businesses and consumers that will result from the continued growth in the use of the Part 15 industry, our nation's economy also benefits due to the continued development of these new, advanced radio technologies by American companies.^{9/}

In a report to the Secretary of Commerce, the Commission reiterated the widespread commercial success of Part 15 devices in the 902-928 MHz band, and stated its reluctance to "jeopardize the significant private sector investment already made in developing new technologies operating under Part 15."^{10/} Commission Orders concerning Part 15 have always articulated the Commission's encouragement of and concern for Part 15 systems.^{11/} Given these consistent themes, the agency should be reluctant to impose a surcharge that, however beneficial in its ultimate purpose, would have the effect of encumbering an industry whose success depends upon its ability to keep costs and regulatory burdens as low as possible.^{12/}

^{8/} Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, First Report and Order and Second Notice of Proposed Rulemaking, 10 FCC Rcd 4769 (1995).

^{9/} Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order, 10 FCC Rcd 4695, 4699-700 (1995) (footnotes omitted).

^{10/} Report to Ronald H. Brown, Secretary, U.S. Department of Commerce, Regarding the Preliminary Spectrum Reallocation Report, 9 FCC Rcd 6793, 6801 (1994).

^{11/} See Revision of Part 15, Notice of Proposed Rule Making, 2 FCC Rcd 6135, 6137 (1987) (Part 15 operations will "provide major benefits to both manufacturers and consumers"); Amendment of Parts 2 and 15 of the Rules With Regard to the Operation of Spread Spectrum Systems, Report and Order, 5 FCC Rcd 4123, 4124 (1990) ("[w]e desire to encourage the development and implementation of this exciting new family of technologies").

^{12/} See Revision of Part 15, Notice of Proposed Rule Making, 2 FCC Rcd 6135 (the Commission designed its Part 15 rules to avoid placing "unnecessary or unreasonable economic (continued...)

III. In Providing Subsidies to Schools, Libraries, and Health Care Providers for Telecommunications Services the FCC Must Preserve the Incentives Created by the Competitive Marketplace In Order to Present These Users with a Full Range of Choices Of Carriers and Technologies

In pointed contrast to the narrowly circumscribed provisions for contribution to universal service support, the provisions in the 1996 Act for distribution of universal service support are broadly worded. Congress intended that access to advanced telecommunications services and information services would be provided throughout the country, and it placed particular emphasis on services for schools, libraries, and health care providers.^{13/} Importantly, with respect to schools and libraries (and perhaps with respect to health care providers as well) the 1996 Act does not restrict the availability of universal service subsidies to only state-certified eligible carriers.^{14/} Rather, the 1996 Act describes a system of subsidies under which schools, libraries and health care providers would obtain telecommunications services at a discount, and carriers providing discounted service would receive reimbursement from a universal service fund to be established.

^{12/}(...continued)

hardship" on the Part 15 industry). Indeed, the very reason for not requiring a license is to facilitate innovation by removing the regulatory burdens associated with the licensing process. See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd 7700, 7734 (1993).

^{13/} See 1996 Act § 254(b)(2), (b)(6), (c)(3), (h)(2)(A).

^{14/} The provisions regarding schools and libraries in Section 254(h)(1)(B)(ii) override the general restriction, contained in Section 254(e), that only state-designated "eligible carriers" are eligible to receive universal service support. See also 1996 Act § 214(e) (procedures for state designation of eligible carriers). The provisions regarding health care providers in Section 254(h)(1)(A) do not explicitly override Section 254(e), but the 1996 Act everywhere else treats these users on an equal footing with schools and libraries.

The central issue facing the Commission in implementing this subsidy program is its impact on competition. As a general matter, Metricom believes that competition is preferable to regulation. In this case, though, the FCC need not be guided by Metricom's belief when Congress has made this same point abundantly clear: the 1996 Act is "An Act [t]o promote competition and reduce regulation."^{15/} Massive subsidy programs tend to impede competition by distorting incentives when services are not priced at economic cost.^{16/} Moreover, the Commission itself has recognized that the administrative cost of enforcing the rules by which subsidies are limited to use "for educational purposes" may be significant.^{17/} The temptation to abuse the system will be greater when the subsidies are greater.

Keeping in mind these anticompetitive effects, the Commission should attempt to minimize the impact of this Congressionally mandated subsidy program on competition. First, the program must not favor one competitor over another; schools, libraries, and health care providers must not be guided in their choice of a carrier or service by the existence of subsidies for some but not all carriers and services.^{18/} Second, the program must not favor one

^{15/} 1996 Act Prologue, 110 Stat. 56 (1996).

^{16/} See, e.g., MTS and WATS Market Structure, Memorandum Opinion and Order, 54 R.R.2d (P&F) 615 at ¶ 7 ("Artificial pricing structures, while perhaps appropriate for use in achieving social objectives under the right conditions, cannot withstand the pressures of a competitive marketplace."); National Assoc. of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095, 1116 (noting incentives for uneconomic bypass when telecommunications services are not priced at cost).

^{17/} See Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 ¶¶ 84-86, 103 (Mar. 8, 1996).

^{18/} See Common Carrier Bureau, Preparation for Accessing Universal Service Issues 30 (1996) ("Subsidies directed only to the incumbent service provider . . . may make effective competition impossible.")

technology over another. Wireless, unlicensed, and other alternatives to traditional landline service may prove to be the best choice for these public institutional users to gain access to advanced telecommunications and information services. Any subsidy program must present to these users a range of choices and incentives that replicates those in the competitive marketplace.

IV. No Carrier Other Than an "Eligible Carrier" Should Be Forced to Connect its Network to Public Institutional Telecommunications Users

The 1996 Act requires the FCC "to define the circumstances under which a communications carrier may be required to connect its network to" certain schools, libraries, and health care providers which the 1996 Act terms "public institutional telecommunications users."^{19/} Metricom respectfully suggests that the FCC use Section 214(e) of the 1996 Act to define these circumstances. That section provides a mechanism by which subscribers in all areas of the country are assured of interconnection with at least one carrier which must offer all of the services that the Commission finds are necessary for schools, libraries, and health care providers.^{20/} Given the assurance of at least one eligible carrier which must offer the appropriate services, it makes no sense for the Commission to require any carriers other than eligible carriers to provide interconnection to schools, libraries and health care providers.

^{19/} 1996 Act § 254(h)(2)(B), h(5)(C).

^{20/} Designation as an eligible carrier is voluntary; however, in case no carrier offers a requested service, Section 214(e) permits the state to designate an eligible carrier which must provide that service. See 1996 Act Section 254(c)(3) (designation of services for support of universal service for schools, libraries, and health care providers), Section 214(e) (requiring that eligible carriers offer all services designated under Section 254(c)).

V. Conclusion

For the foregoing reasons, the Commission should adopt regulations relating to universal service in accordance with these comments.

Respectfully submitted,

METRICOM, INC.

By: Henry M. Rivera / JTN

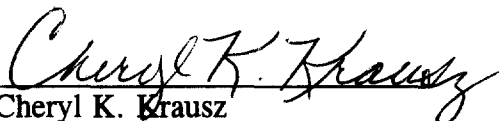
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Dated: April 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Metricom, Inc. was served this 12th day of April, 1996, by first class mail, postage prepaid or by hand (*) to each person on the attached service list.


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